

Department of Veterans Affairs

§ 3.959

will be paid in the absence of an election to receive the lesser benefit.

(Authority: Section 10, Pub. L. 85-857)

(b) *Emergency officers' retirement pay.* Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.

(Authority: Section 11, Pub. L. 85-857)

(c) *Service connection established under prior laws.* In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are protected by section 2316(b), Pub. L. 85-56 and section 10, Pub. L. 85-857 as to both service connection and rate of compensation, so long as the conditions warranting such status and rate continue. Any disability so service connected may be evaluated under the Schedule for Rating Disabilities, 1945 (looseleaf edition) and benefits awarded on the basis thereof, as well as special monthly compensation under 38 U.S.C. 1114, provided such action results in compensation payable at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants reevaluation of service-connected disabilities, compensation will be awarded under the provisions of 38 U.S.C. 1114.

[26 FR 1608, Feb. 24, 1961, as amended at 26 FR 8561, Sept. 13, 1961; 26 FR 12766, Dec. 30, 1961]

§ 3.954 Burial allowance.

When any person who had a status under any law in effect on December 31, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. ch. 23.

(Authority: 38 U.S.C. 2305)

[26 FR 1608, Feb. 24, 1961]

§§ 3.955-3.956 [Reserved]

§ 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38 U.S.C., which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with § 3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation.

(Authority: 38 U.S.C. 1159)

[33 FR 15286, Oct. 15, 1968]

§ 3.958 Federal employees' compensation cases.

Any award approved prior to September 13, 1960, authorizing Department of Veterans Affairs benefits concurrently with an award of benefits under the Federal Employees' Compensation Act based on a finding that the same disability or death was due to civilian employment is not affected by the prohibition against concurrent awards contained in 5 U.S.C. 8116(b).

[41 FR 20408, May 18, 1976]

§ 3.959 Tuberculosis.

Any veteran who, on August 19, 1968, was receiving or entitled to receive compensation for active or inactive (arrested) tuberculosis may receive compensation under 38 U.S.C. 1114(q)